IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

Crl.Rev.Pet.No. 36 of 2006(D)

CMP.7628/2005 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOTTARAKKARA

REVN. PETITIONER:

NARAYANAN NAIR, S/O.LATE NARAYANAN NAIR, RESIDING AT KAIPAKALAYAM, KARIKKAL MURI, KARIMPINPUZHA, PUTHOOR VILLAGE, KOTTARAKKARA TALUK.

BY ADV. SRI.R.SATISH KUMAR
SMT.PRIYA S.RANI

RESPONDENTS: STATE AND ACCUSED

1. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. RATNAMMA, W/O.LATE KESAVAN NAIR, KOOTTUVILAKUZHY VEEDU, KARIMPINPUZHA MURI, PAVITHRESWARAM VILLAGE, KOTTARAKKARA TALUK.

3. GOVINDAN NAIR, S/O.SANKARA PILLAI, NADUVATHU VEEDU, KARIMPINPUZHA MURI, PAVITHRESWARAM VILLAGE, KOTTARAKKARA TALUK.

4. GOPINATHAN PILLAI, S/O.KRISHNA PILLAI, THEKKEPULIMOOTTIL VEEDU, THAZHAMCHERRY, KARIMPINPUZHA P.O., PAVITHRESWARAM VILLAGE, KOTTARAKKARA TALUK.

5. MADHAVAN, S/O.KRISHNAN, PARIYARAKOTTUVEEDU, MULAVANA P.O., KUNDARA, KOLLAM.

BY PUBLIC PROSECUTOR SRI.KAMMAPPU

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 01/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.PADMANABHAN NAIR.J

Crl.R.P No.36 OF 2006

Dated this the 1st day of February 2007

ORDER

The complainant in CMP No.7628/2005 is the revision petitioner. The revision petitioner filed complaint against respondents 2 to 5 alleging that they had committed offences punishable under Section 193, 196, 465, 467, 471 120(B) r/w 34 I.P.C It was alleged that the brother of the petitioner died on 20-11-1987 leaving the petitioner and one Kesavan Nair as his heirs. It is alleged that after the death of Gopalan Nair, respondents 2 to 5 claimed title over the properties left by Gopalan Nair on the strength of a will alleged to have been executed by the deceased on 18-11-1987. Petitioner came to know about the execution of will in the year 1991. He filed O.S No.253/1991 before the Sub-court Kottarakkara and the Sub-court decreed the suit setting aside the will. It was found that the will was a forged one. According to the petitioner the respondents 2 to 5 conspired together and forged a will purporting to be one executed by deceased Gopalan Nair. The complaint was filed on 26-7-2005. The learned Magistrate dismissed the complaint It was found that there was delay of 14 years and the petitioner had not offered any explanation It was also held that there was a legal bar for proceeding with the case under Section 195 of the Cr.P.C. Challenging that order this Crl.R.P is filed.

2. It is true that the finding of the learned Magistrate that there is a bar to proceed with the complaint is unsustainable in view of the Constitution Bench decision rendered in **Iqbal Singh Marwa Vs. Meenakshi Marwa 2005 (2) ILR Kerala 347).** It was held that the power under Section 195 (1) B (II) will be attracted only if the offence is committed with respect to a document after it has been produced or given in evidence in a proceeding pending before a Court. Admittedly in this case the allegation was that will was forged in the year 1987 and the present case was filed in the year 2006 So the view taken by the Magistrate that there is bar , is unsustainable.

3. The execution of the will and the filing of the complaint arose in the year 1987. According to the petitioner the will was alleged to have been executed on 18-11-1987 and the Executant died on 20-11-1987. According to the petitioner he came to know about the execution of the will in the year 1991. He filed O.S.253/1991 for setting aside the will. The suit was decreed on 2-2-1996 finding that the will was a forged one. . The complaint is filed before the Judicial First Class Magistrate Court-I

Kottarakara on 23-7-2005. As rightly observed by the learned Magistrate no explanation was offered why the petitioner waited till 2005. The materials on record show that the petitioner was an employee working in the Kerala State Electricity Board. He was aware of the finding of the Civil Court . The findings of the court below that the petitioner failed to offer his explanation for the delay of more than 14 years is perfectly correct and does not called for any interference. So this Crl.R.P. is only to be dismissed.

4. In the result the Crl.R.P. is dismissed

K.PADMANABHAN NAIR,JUDGE

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